

Office of the State Auditor

Division of State Audit

Commission on Legal Counsel for Indigents Bismarck, North Dakota

Audit Report for the
Biennium Ended June 30, 2007
Client Code 188

Robert R. Peterson
State Auditor



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Transmittal Letter

April 29, 2008

The Honorable John Hoeven, Governor
Members of the North Dakota Legislative Assembly
Ms. Robin Huseby, Executive Director

We are pleased to submit this audit of the Commission on Legal Counsel for Indigents for the biennium ended June 30, 2007. This audit resulted from the statutory responsibility of the State Auditor to audit or review each state agency once every two years. The same statute gives the State Auditor the responsibility to determine the contents of these audits.

In determining the contents of the audits of state agencies, the primary consideration was to determine how we could best serve the citizens of the state of North Dakota. Naturally we determined financial accountability should play an important part of these audits. Additionally, operational accountability is addressed whenever possible to increase efficiency and effectiveness of state government.

The in-charge auditor for this audit was Allison Bader. Fred Ehrhardt, CPA, was the staff auditor. Cindi Pedersen, CPA, was the audit supervisor and Paul Welk, CPA, was the audit manager. Inquiries or comments relating to this audit may be directed to the audit manager by calling (701) 328-2320. We wish to express our appreciation to Ms. Huseby and her staff for the courtesy, cooperation, and assistance they provided to us during this audit.

Respectfully submitted,

Robert R. Peterson
State Auditor

Executive Summary

INTRODUCTION

The North Dakota Commission on Legal Counsel for Indigents is an executive branch agency and consists of the statutorily-created board, which consists of seven persons and appointed from various entities, to serve staggering terms. The agency is responsible for the delivery of constitutionally-adequate services to criminal defendants and respondents in the state who financially qualify for indigent services in accordance with eligibility requirements. The Commission utilizes the seven judicial districts to regulate its programs.

RESPONSES TO LAFRC AUDIT QUESTIONS

The Legislative Audit and Fiscal Review Committee (LAFRC) requests that certain items be addressed by auditors performing audits of state agencies.

1. What type of opinion was issued on the financial statements?

Financial statements were not prepared by the Commission on Legal Counsel for Indigents in accordance with generally accepted accounting principles so an opinion is not applicable. The agency's transactions were tested and included in the state's basic financial statements on which an unqualified opinion was issued.

2. Was there compliance with statutes, laws, rules, and regulations under which the agency was created and is functioning?

Yes.

3. Was internal control adequate and functioning effectively?

Yes.

4. Were there any indications of lack of efficiency in financial operations and management of the agency?

No.

5. Has action been taken on findings and recommendations included in prior audit reports?

The Commission on Legal Counsel for Indigents is a newly created executive branch agency per North Dakota Century Code Chapter 54-61.

6. *Was a management letter issued? If so, provide a summary below, including any recommendations and the management responses.*

Yes, a management letter was issued and is included on pages 14-15 of this report, along with management's response.

LAFRC AUDIT COMMUNICATIONS

1. *Identify any significant changes in accounting policies, any management conflicts of interest, any contingent liabilities, or any significant unusual transactions.*

There were no significant changes in accounting policies, no management conflicts of interest were noted, no contingent liabilities were identified or significant unusual transactions.

2. *Identify any significant accounting estimates, the process used by management to formulate the accounting estimates, and the basis for the auditor's conclusions regarding the reasonableness of those estimates.*

The Commission on Legal Counsel for Indigents' financial statements do not include any significant accounting estimates.

3. *Identify any significant audit adjustments.*

Significant audit adjustments were not necessary.

4. *Identify any disagreements with management, whether or not resolved to the auditor's satisfaction relating to a financial accounting, reporting, or auditing matter that could be significant to the financial statements.*

None.

5. *Identify any serious difficulties encountered in performing the audit.*

None.

6. *Identify any major issues discussed with management prior to retention.*

This is not applicable for audits conducted by the Office of the State Auditor.

7. *Identify any management consultations with other accountants about auditing and accounting matters.*

None.

8. *Identify any high-risk information technology systems critical to operations based on the auditor's overall assessment of the importance of the system to the agency and its mission, or whether any exceptions identified in the six audit report questions to be addressed by the auditors are directly related to the operations of an information technology system.*

ConnectND Finance and Human Resource Management System (HRMS) are high-risk information technology systems critical to the Commission on Legal Counsel for Indigents.

Audit Objectives, Scope, And Methodology

Audit Objectives

The objectives of this audit of the Commission on Legal Counsel for Indigents for the biennium ended June 30, 2007 were to provide reliable, audited financial statements and to answer the following questions:

1. What are the highest risk areas of the Commission on Legal Counsel for Indigents' operations and is internal control adequate in these areas?
2. What are the significant and high-risk areas of legislative intent applicable to the Commission on Legal Counsel for Indigents and are they in compliance with these laws?
3. Are there areas of the Commission on Legal Counsel for Indigents' operations where we can help to improve efficiency or effectiveness?

Audit Scope

This audit of the Commission on Legal Counsel for Indigents is for the biennium ended June 30, 2007. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The Commission on Legal Counsel for Indigents central office is located in Valley City and their four public defender offices are located in Dickinson, Williston, Minot, and Grand Forks. Locations were selected based on the level of activities (all transactions flow through the central office).

Audit Methodology

To meet the objectives outlined above, we:

- Prepared financial statements from the legal balances on the state's accounting system tested as part of this audit and the audit of the state's Comprehensive Annual Financial Report and developed a discussion and analysis of the financial statements.
- Performed detailed analytical procedures including computer assisted auditing techniques. These procedures were used to identify high risk transactions and potential problem areas for additional testing.
- Tested internal control and compliance with laws and regulations which included selecting representative samples to determine if controls were operating effectively and to

determine if laws were being followed consistently. Nonstatistical sampling was used and the results were projected to the population. Further where applicable, populations were stratified to ensure that particular groups within a population were adequately represented in the sample, and to improve efficiency by gaining greater control on the composition of the sample.

- Interviewed appropriate agency personnel.
- Queried the ConnectND (PeopleSoft) ERP system. Given the complexity of the state's accounting system significant evidence was obtained from ConnectND.
- Observed the Commission's processes and procedures.

In aggregate there were not any significant limitations or uncertainties related to our overall assessment of the sufficiency and appropriateness of audit evidence.

Discussion And Analysis

The accompanying financial statements have been prepared to present the Commission on Legal Counsel for Indigents' revenues and expenditures on the legal (budget) basis. The accompanying financial statements are not intended to be presented in accordance with generally accepted accounting principles (GAAP).

For the biennium ended June 30, 2007, operations of the Commission on Legal Counsel for Indigents were primarily supported by appropriations from the state's general fund. This is supplemented by federal funding and fees credited to the agency's operating fund.

FINANCIAL SUMMARY

Revenues consisted primarily of indigent defense application fees and court administration fees collected through the county clerk of court offices. In fiscal year 2006, the Commission on Legal Counsel for Indigents also received the remaining cash balance from the Indigent Defense Administration fund transferred from the Supreme Court pursuant to Senate Bill 2027 Section 10 of the 2005 Legislative Assembly. Total revenues and transfers in were \$787,819 for the year ended June 30, 2007 as compared to \$1,495,562 for the year ended June 30, 2006.

Total expenditures for the Commission on Legal Counsel for Indigents were \$4,535,185 for the year ended June 30, 2007 as compared to \$2,288,082 for the prior year. The increase in total expenditures for the audited period reflects primarily the creation of the Commission in accordance with NDCC 54-61 with financial operations beginning in January 2006 pursuant to Senate Bill 2027 Section 10 of the 2005 Legislative Assembly. In addition, the Commission on Legal Counsel for Indigents opened four public defender offices and continued contracts for legal services previously contracted by the Supreme Court.

Payments for professional services consist of legal services contracts related to administering the indigent defense program for North Dakota. These professional service contracts accounted for approximately 74% of the expenditures during the fiscal years reviewed.

***ANALYSIS OF SIGNIFICANT VARIANCES BETWEEN FINAL
BUDGETED AND ACTUAL EXPENDITURES***

The Commission on Legal Counsel for Indigents' unexpended appropriation reflects primarily the timing related to the creation of the Commission pursuant to North Dakota Century Code Chapter 54-61 with financial operations beginning in January 2006.

Financial Statements

STATEMENT OF REVENUES AND EXPENDITURES

	June 30, 2007	June 30, 2006
<u>Revenues and Other Sources:</u>		
Indigent Defense Application Fee	\$ 81,574	\$ 44,385
Court Administration Fee	706,245	289,523
Transfers In		1,161,654
Total Revenues and Other Sources	\$ 787,819	\$ 1,495,562
<u>Expenditures and Other Uses:</u>		
Professional Services Fees	\$ 3,206,668	\$ 1,812,112
Salaries and Benefits	946,773	264,689
Travel	70,748	39,662
Rentals/Leases – Building/Land	59,175	22,800
Supplies	59,120	34,490
IT Data Processing	49,366	8,495
Operating Fees and Services	43,593	31,717
Office Equipment/Furniture Under \$,5000	33,129	40,314
IT Communications	16,404	8,349
Professional Development	13,255	7,608
IT Equipment Under \$5,000	11,905	6,863
Postage	11,025	3,348
Equipment Over \$5,000	7,719	
Other Expenses	6,305	7,635
Total Expenditures and Other Uses	\$ 4,535,185	\$ 2,288,082

STATEMENT OF APPROPRIATIONS

For The Biennium Ended June 30, 2007

Expenditures by Line Item:	<u>Original Appropriation</u>	<u>Adjustments</u>	<u>Final Appropriation</u>	<u>Expenditures</u>	<u>Unexpended Appropriation</u>
Legal Counsel for Indigents		\$ 8,097,590	\$ 8,097,590	\$ 6,823,297	\$ 1,274,322
Totals	<u>\$ 0</u>	<u>\$ 8,097,590</u>	<u>\$ 8,097,590</u>	<u>\$ 6,823,297</u>	<u>\$ 1,274,322</u>
Expenditures by Source:					
General Fund		\$ 6,877,590	\$ 6,877,590	\$ 6,418,749	\$ 458,840
Other Funds		1,220,000	1,220,000	404,518	815,482
Totals	<u>\$ 0</u>	<u>\$ 8,097,590</u>	<u>\$ 8,097,590</u>	<u>\$ 6,823,267</u>	<u>\$ 1,274,322</u>

Appropriation Adjustments:

The \$6,877,590 general fund and \$1,220,000 other fund adjustments are pursuant to Senate Bill 2027 Sections 8 and 10 of the 2005 Legislative Assembly related to the transfer of remaining appropriation not expended by the Supreme Court to the Commission on Legal Counsel for Indigents.

Internal Control

In our audit for the biennium ended June 30, 2007, we identified the following areas of the Commission on Legal Counsel for Indigents' internal control as being the highest risk:

Internal Controls Subjected To Testing

- Controls surrounding the processing of revenues.
- Controls surrounding the processing of expenditures.
- Controls effecting the safeguarding of assets.
- Controls relating to compliance with legislative intent.
- Controls surrounding the ConnectND (PeopleSoft) system.

The criteria used to evaluate internal control is published in the publication *Internal Control – Integrated Framework* from the Committee of Sponsoring Organizations (COSO) of the Treadway Commission.

We gained an understanding of internal control surrounding these areas and concluded as to the adequacy of their design. We also tested the operating effectiveness of those controls we considered necessary based on our assessment of audit risk. We concluded internal control was adequate.

Auditors are required to report deficiencies in internal control that are significant within the context of the objectives of the audit. A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect (1) misstatements in financial or performance information, (2) violations of laws and regulations, or (3) impairments of effectiveness or efficiency of operations, on a timely basis. Considering both qualitative and quantitative factors, we did not identify any significant deficiencies in internal control. However, we noted other matters involving internal control that we have reported to management of Commission on Legal Counsel for Indigents in a management letter dated April 29, 2008.

Compliance With Legislative Intent

In our audit for the biennium ended June 30, 2007, we identified and tested Commission on Legal Counsel for Indigents' compliance with legislative intent for the following areas that we determined to be significant and of higher risk of noncompliance:

- Compliance with commission responsibilities pursuant to NDCC 54-61-02.
- Compliance with appropriations and related transfers (2005 North Dakota Session Laws chapter 30).
- Compliance with OMB's Purchasing Procedures Manual.
- Travel-related expenditures are made in accordance with OMB policy and state statute.
- Adequate blanket bond coverage of employees (NDCC section 26.1-21-08).
- Compliance with fixed asset requirements including record keeping, surplus property, lease and financing arrangements in budget requests, and lease analysis requirements.
- Compliance with payroll related laws including statutory salaries for applicable elected and appointed positions, and certification of payroll.

The criteria used to evaluate legislative intent are the laws as published in the *North Dakota Century Code* and the *North Dakota Session Laws*.

Government Auditing Standards requires auditors to report all instances of fraud and illegal acts unless they are inconsequential within the context of the audit objectives. Further, auditors are required to report significant violations of provisions of contracts or grant agreements, and significant abuse that have occurred or are likely to have occurred.

The results of our tests disclosed no instances of noncompliance that are required to be reported under *Government Auditing Standards*. Thus, we concluded there was compliance with the legislative intent identified above.

While we did not find any items that were required to be reported in accordance with *Government Auditing Standards*, we noted certain inconsequential or insignificant instances of non-compliance that we have reported to management of the Commission on Legal Counsel for Indigents in a management letter dated April 29, 2008.

Operations

This audit did not identify areas of Commission on Legal Counsel for Indigents' operations where we determined it was practical at this time to help to improve efficiency or effectiveness.

Management Letter (Informal Recommendations)

April 29, 2008

Ms. Robin Huseby, Executive Director
Commission on Legal Counsel for Indigents
2517 West Main Street
Valley City, ND 58072

Dear Ms. Huseby:

We have performed an audit of the Commission on Legal Counsel for Indigents for the biennium ended June 30, 2007, and have issued a report thereon. As part of our audit, we gained an understanding of the Commission on Legal Counsel for Indigents's internal control structure to the extent we considered necessary to achieve our audit objectives. We also performed tests of compliance as described in the same report.

Our audit procedures are designed primarily to enable us to report on our objectives including those related to internal control and compliance with laws and regulations and may not bring to light all weaknesses in systems and procedures or noncompliance with laws and regulations which may exist. We aim, however, to use our knowledge of your organization gained during our work to make comments and suggestions which we hope will be useful to you.

In connection with the audit, gaining an understanding of the internal control structure, and tests of compliance with laws and regulations referred to above, we noted certain conditions we did not consider reportable within the context of your audit report. These conditions relate to areas of general business practice or control issues that have no significant bearing on the administration of federal funds. We do, however, want to present our recommendations to you for your consideration and whatever follow-up action you consider appropriate. During the next audit we will determine if these recommendations have been implemented; if not, we will reconsider their status.

The following present our informal recommendations.

FIXED ASSETS

Informal Recommendation 07-1: We recommend the Commission on Legal Counsel for Indigents strengthen controls surrounding fixed assets by ensuring a physical inventory is performed on an annual basis by an individual independent of recordkeeping responsibilities.

ACCOUNTS PAYABLE/EXPENDITURES

Informal Recommendation 07-2: We recommend the Commission on Legal Counsel for Indigents obtain proper certification from the State Procurement office for procurement training.

Informal Recommendation 07-3: We recommend the Commission on Legal Counsel for Indigents ensure proper approval procedures of purchase card expenditures by an individual with proper approval authority.

LEGISLATIVE INTENT

Informal Recommendation 07-4: We recommend the Commission on Legal Counsel for Indigents develop a documented policy of the process established for contracting for legal counsel for indigents pursuant to NDCC 54-61-02.

PAYROLL

Informal Recommendation 07-5: We recommend the Commission on Legal Counsel for Indigents strengthen controls surrounding payroll by:

- a. Ensuring an individual independent of processing payroll properly approve the payroll register;
- b. Ensuring Personal Action Forms are approved and reconciled to the initiating form by an individual independent of data entry responsibilities; and,
- c. Reviewing and approving ConnectND one time payments on a regular basis.

GENERAL

Informal Recommendation 07-6: We recommend the Commission on Legal Counsel for Indigents:

- Establish and perform a fraud risk assessment on a recurring basis; and,
- Design and document the necessary control activities to ensure that each significant fraud exposure identified during the risk assessment process has been adequately mitigated.

Informal Recommendation 07-7: We recommend the Commission on Legal Counsel for Indigents develop a code of ethics and code of business conduct. We recommend the Commission on Legal Counsel for Indigents ensure employees acknowledge receipt of the code of ethics and code of business conduct on an annual basis.

Management of Commission on Legal Counsel for Indigents response:

To date the Commission on Legal Counsel has taken certain steps to comply with some of the recommendations mentioned in the informal recommendations of the audit performed by the State Auditor. Specifically, the Commission has prepared a Business Code of Ethics it is distributing to commission members for approval, adopted new procedures for approval of "P" card expenditures, have adopted procedures to strengthen controls surrounding payroll (approval of payroll register by Director and approve personal action forms), have proposed a process for establishing contracts with legal providers and will be distributing that policy for comments by attorneys and commission members, and have obtained proper certification from the State Procurement office for procurement training. We will continue to work on any other informal recommendations as the months ensue.

I encourage you to call myself or an audit manager at 328-2320 if you have any questions about the implementation of recommendations included in your audit report or this letter.

Sincerely,

Allison Bader
Auditor in-charge